

TEXAS BOARD OF CHIROPRACTIC EXAMINERS
William P. Hobby Building
333 Guadalupe, Suite 3-825
Austin, Texas 78701

BOARD MEETING: 1:00 p.m. – Adjournment
Hobby Building, Tower 2, Room 225

MINUTES FROM THE
May 17, 2016
BOARD MEETING

1. CALL TO ORDER, ROLL CALL & ESTABLISHMENT OF A QUORUM

Call to Order, Roll Call and Establishment of a Quorum. Vote as necessary on excusing any absent board members.

Action Taken: Board President Cynthia Tays, DC called the meeting to order at 1:00 pm and called the roll. All board members were present with the exception of Dr. Montgomery, Dr. Thomas and Kenya Woodruff and a quorum was announced. The absent board members were deemed excused.

Others present were:

Joe Thrash, Assistant Attorney General
Bryan Snoddy, General Counsel
Patricia Gilbert, Executive Director
Scott Stalnaker, Legal Assistant
Jo Manning, Executive Assistant
Scott Parker, Director of Compliance and Investigations
Mary Feys, Compliance and Investigation Administrative Assistant
Jennifer Hertsensberg, Director of Licensure
Dr. Karen Campion, Member
Anne Boatright, Public Member
Dr. Amy Vavra, Member
Dr. John Riggs, Member
Johns Steinberg, Public Member
James Cogburn, CFO
Robert Lawson, Investigator
Norma Rodriguez, Investigator
Michael Campos, Investigator

2. APPROVAL OF MINUTES

Approval of Minutes from the February 18, 2015 Board Meeting.

Action Taken: Dr. Campion **MOVED** and Dr. Riggs **SECONDED** approval of the minutes from the October 14, 2015 Board Meeting. John Steinberg abstained. After consideration, the Board **APPROVED** the motion.

3. PUBLIC COMMENTS

Forum for licensees, the general public or other interested stakeholders to address the Board.

Action Taken: No action taken.

4. EXECUTIVE COMMITTEE BUSINESS

Cynthia Tays, D.C.

4.1 President's Report

Dr. Cynthia Tays made a brief oral report to the Board on the new committee assignments.

Action Taken: Dr's. Tays, Campion and Riggs discussed their attendance at the annual Federation of Chiropractic Licensing Boards meeting. Topics discussed included the Pastoral Medical Association and inappropriate comments to patients.

4.2. Executive Director

4.2.1. Executive Director's Report

Executive Director Patricia Gilbert shared recent agency activities. She also discussed eStrategy's Solutions work with the staff on jurisprudence exam and rules changes related to fees. She introduced Steve Matt of eStrategies who discussed e-learning, managing data and online services for regulatory agencies.

Ms. Gilbert and the Directors answered questions from the Board members concerning the on-line Jurisprudence course and exam, and other matters of concern to the Board.

4.2.2 Chief Financial Officer's Report

Chief Financial Officer, James Cogburn, stated there are no exceptional problems regarding agency finances and discussed other matters of financial importance to the Board which included collections, revenues, deposits and

fund balance. He also announced his resignation from the Board effective May 31, 2016.

4.2.3 Director of Licensure and Education's Report

Director of Licensure and Education, Jennifer Hertsenberg, presented written and oral reports to the Board concerning disruption of radiological technician license renewals after the recent legislative change, an overview of the metrics the second quarter of the current fiscal year and of the annual metrics in comparison to the previous year.

4.2.4 Director of Compliance and Investigations Report

Director of Compliance and Investigations, Scott Parker, presented written and oral reports to the Board concerning metrics on the compliance actions taken during the second quarter of 2016 and an overview of the annual metrics in comparison to the previous year.

Action Taken: No action taken.

4.2.4 General Counsel, Legal Division

General Counsel, Bryan Snoddy, presented written and oral reports to the Board concerning metrics on the legal actions pending and taken during the second quarter of 2016.

4.3 Board Member & Committee Assignments

The Board discussed changes to appointments of Board members to new committee assignments.

Action Taken: No action take.

5. LICENSURE AND EDUCATIONAL STANDARDS COMMITTEE BUSINESS

5.1 Request to sit for the Texas Jurisprudence Examination.

5.1.1 Tamika Prunty, New Applicant.

Action Taken: Dr. Tays **MOVED** to approve, but require the license be probated for a period of two years, Mr. Steinberg **SECONDED**. The motion failed.

Action taken: Dr. Riggs **MOVED** to approve but require the license to be probated for a period of two years and pass the Ethics and Boundaries Assessment Services Exam (EBAS) at her own expense within six months of the issuance of a license. Dr. Campion **SECONDED**. The motion carried.

5.1.2 Vance Cornelision, New Applicant.

Action Taken: Dr. Tays **MOVED** to deny, Mr. Steinberg **SECONDED**. The motion carried.

5.2 Request to Sit for the Texas Jurisprudence Examination and be reinstated from a Revoked Status.

5.2.1 Melva D. Mitchell-Gray, revoked applicant

Action Taken: Mr. Steinberg **MOVED** to approve, no **SECOND**. The motion did not carry.

Dr. Campion **MOVED** to approve at the end of the applicants criminal probation period (January 20, 2018), Ms. Boatright **SECONDED**. Dr. Campion withdrew the motion.

Dr. Campion **MOVED** to deny. Ms. Boatright **SECONDED**. The motion carried.

6. ENFORCEMENT COMMITTEE BUSINESS

6.1 Consideration of Accepted Agreed Orders. The Board will receive a report from the Enforcement Committee concerning Agreed Orders that have been recommended by the Enforcement Committee and accepted by the Respondents pursuant to the Chiropractic Act §201.554.

6.1.1 Case #2014-073

6.1.2 Case #2015-058

6.1.3 Case #2015-088

6.1.4 Case #2015-129

6.1.5 Case #2015-201

6.1.6 Case #2015-215

6.1.7 Case #2015-226

6.1.8 Case #2015-229

6.1.9 Case #2015-230

6.1.10 Case #2015-231

6.1.11 Case #2015-232

6.1.12 Case #2015-239

- 6.1.13 Case #2015-267
- 6.1.14 Case #2015-277
- 6.1.15 Case #2016-035
- 6.1.16 Case #2016-046
- 6.1.17 Case #2016-048
- 6.1.18 Case #2016-062
- 6.1.19 Case #2016-069
- 6.1.20 Case #2016-131
- 6.1.21 Case #2016-171

Action Taken: Dr. Campion **MOVED** and Dr. Vavra **SECONDED** to approve the Agreed Orders listed in Agenda Items 6.1.1-6.1.21. After consideration, the Board **APPROVED** the motion.

6.2 Consideration of Requests to Expunge Records

- 6.2.1 Case #0109-186
- 6.2.2 Case #2012-066
- 6.2.3 Case #0101-237

Action Taken: Dr. Campion **MOVED** and Ms. Boatright **SECONDED** to grant expungement in Agenda Items 6.2.1 – 6.2.3 based on meeting the criteria. After consideration, the Board **APPROVED** the motion.

6.3 Consideration of Board Orders

- 6.3.1 Case #2015-098
- 6.3.2 Case #2015-105
- 6.3.3 Case #2015-117
- 6.3.4 Case #2015-149
- 6.3.5 Case #2015-189
- 6.3.6 Case #2015-199
- 6.3.7 Case #2015-245

Action Taken: Dr. Campion **MOVED** and Mr. Steinberg **SECONDED** to approve this Board Orders in Agenda Items 6.3.1 - 6.3.7. After consideration, the Board **APPROVED** the motion.

6.4 Consideration of Cease and Desist Orders

- 6.4.1 Case #2015-090
- 6.4.2 Case #2015-163
- 6.4.3 Case #2015-191
- 6.4.4 Case #2015-269
- 6.4.5 Case #2015-270

- 6.4.6 Case #2016-004
- 6.4.7 Case #2016-005
- 6.4.8 Case #2016-006
- 6.4.9 Case #2016-022
- 6.4.10 Case #2016-023
- 6.4.11 Case #2016-024
- 6.4.12 Case #2016-025
- 6.4.13 Case #2016-036
- 6.4.14 Case #2016-037
- 6.4.15 Case #2016-082
- 6.4.16 Case #2016-089
- 6.4.17 Case #2016-100
- 6.4.18 Case #2016-101
- 6.4.19 Case #2016-129 & 2016-130
- 6.4.20 Case #2016-132
- 6.4.21 Case #2016-133
- 6.4.22 Case #2016-134
- 6.4.23 Case #2016-138
- 6.4.24 Case #2016-143
- 6.4.25 Case #2016-145
- 6.4.26 Case #2016-147
- 6.4.27 Case #2016-178
- 6.4.28 Case #2016-179

Action Taken: Dr. Tays **MOVED** and Dr. Vavra **SECONDED** to approve the Cease and Desist Orders in Agenda Items 6.4.1 - 6.4.28. After consideration, the Board **APPROVED** the motion.

6.5 Consideration of Order of Revocation

6.5.1 Case #2016-214

Action Taken: Dr. Campion **MOVED** and Ms. Boatright **SECONDED** to approve the order of statutory revocation in Agenda Items 6.5.1. After consideration, the Board **APPROVED** the motion.

6.6 Discussion and comments from Committee Chair concerning Committee business, activities or issues.

Action Taken: No action taken.

7. RULES COMMITTEE BUSINESS

7.1 Discussion and Consideration of Rule Amendments and Repeals.

7.1.1 Discussion and consideration to adopt amendment to Rules 78.6(b) (Required Fees and Charges).

Action Taken: Mr. Steinberg **MOVED** to adopt the amendment, Dr. Riggs **SECONDED**. The motion carried.

7.1.2 Discussion and consideration to adopt amendment to Rules 78.8 (Complaint Procedures).

Action Taken: Dr. Riggs **MOVED** to adopt the amendment. Mr. Stienberg **SECONDED**. The motion carried.

7.1.3 Discussion and consideration to proposed amendment to Rule 72.6 (Time, Place and Scope of Examination).

Action Taken: Dr. Riggs **Moved** to table the amendment. Mr. Stienberg **SECONDED**. The motion carried.

7.1.4 Discussion and consideration to proposed amendment to Rule 78.6(a) (Required Fees and Charges).

Action Taken: Mr. Steinberg **MOVED** to adopt the amendment, Dr. Riggs **SECONDED**. The motion carried.

7.1.5 Discussion and consideration of Rule Review for Chapter 74 (Chiropractic Radiologic Technologists).

Action Taken: Mr. Steinberg **MOVED** to adopt the amendment, Dr. Riggs **SECONDED**. The motion carried.

7.1.6 Discussion and consideration to propose amendment to Rule 74.1 (Definitions).

Action Taken: Mr. Steinberg **MOVED** to adopt the amendment, Dr. Riggs **SECONDED**. The motion carried.

7.1.7 Discussion and consideration to propose amendment to Rule 74.2 (Registration of Chiropractic Radiologic Technologists).

Action Taken: Mr. Steinberg **MOVED** to adopt the amendment, Dr. Riggs **SECONDED**. The motion carried.

- 7.2 Discussion and comments from Committee Chair concerning Committee business, activities or issues.

Action Taken: No action taken.

8. EXECUTIVE SESSION

8.1 The Board met in Executive Session

The Board met in Executive Session for consultation with counsel pursuant to Section 551.071, Government Code, wherein the Board and essential staff will receive a briefing from assigned Assistant Attorney General and General Counsel concerning pending or contemplated litigation and settlement offers including but not limited to:

8.1.1 Texas Medical Association lawsuit against the Board, including remand, concerning Diagnosis.

8.1.2 Texas Medical Association lawsuit against the Board regarding Rule 75.17 Scope allowing DC's to perform Vestibular-Ocular-Nystagmus testing and challenge to diagnosis, as well as TMA challenge to definitions of "musculoskeletal system" and "subluxation complex."

8.1.3 Texas Association of Acupuncture and Oriental Medicine lawsuit against the Board, including appeal, regarding the Board allowing certain chiropractors to perform acupuncture within scope of practice.

The Board reconvened in open session after Executive Session to vote on items considered in Executive Session as necessary.

Action Taken: None. The Board went into Executive Session at 2:51 PM and reconvened in Open Session at 3:10 PM.

9. CONSIDERATION OF MOTIONS RELATED TO ITEMS DISCUSSED IN EXECUTIVE SESSION

Board members had the opportunity to offer motions related to any items discussed in Executive Session.

9.1 Consideration of Motions Related to Executive Session

Action Taken: No action taken.

10. MISCELLANEOUS

10.1 Call for future items for discussion and/or consideration by the Board.

Action Taken: Board members directed staff to place certain issues on the future agenda.

10.2 Future Meeting Dates

The planned Board meeting dates for Calendar Years 2016 are:

August 18, 2016

November 17, 2016

**Note: All planned board meeting dates after November 2016 may be found on the agency's website (under "Calendar") at: www.tbce.state.tx.us. All dates are tentative until posted in the Texas Register.*

The next Enforcement Committee date, apart from the Board meetings, are scheduled for:

August 17, 2016

Action Taken: No action taken.

10.3 Adjournment at: 3:14 pm.